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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/852,889	05/10/2001	Eric Bryan Bond	8550	5411

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EXAMINER

RAJGURU, UMAKANT K

ART UNIT PAPER NUMBER

1711

DATE MAILED: 04/16/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

TP-3

Office Action Summary

Application No.

Applicant(s)

Examiner

Group Art Unit

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☐ Responsive to communication(s) filed on _____.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-24 is/are pending in the application.
- Of the above claim(s) 12-14 and 22-24 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-11 and 15-21 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____.
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2
- ☒ Notice of References Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

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1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-11 and 15-21, drawn to a fiber made out of a composition, classified in class 524, subclass 47.
- II. Claims 12, 13, 22 and 23, drawn to a web, classified in class 19, subclass 161.1.
- III. Claims 14 and 24, drawn to an article, classified in class 604, subclass 358.

The inventions are distinct, each from the other because:

Inventions I and II are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product (MPEP § 806.04(b), 3rd paragraph), and the species are patentably distinct (MPEP § 806.04(h)). In the instant case, the intermediate product is deemed to be useful as a material for making a woven rope and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Inventions I and III are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product (MPEP § 806.04(b), 3rd paragraph), and

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the species are patentably distinct (MPEP § 806.04(h)). In the instant case, the intermediate product is deemed to be useful as a material for making a woven rope and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Inventions II and III are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product (MPEP § 806.04(b), 3rd paragraph), and the species are patentably distinct (MPEP § 806.04(h)). In the instant case, the intermediate product is deemed to be useful as a material for adding to a bend of polymers for reinforcement and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

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Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

2. During a telephone conversation with Attorney Angela Marie Stone on March 12, 2002 a provisional election was made with traverse to prosecute the invention of I, claims 1-11 and 15-

21. Affirmation of this election must be made by applicant in replying to this Office action.

Claims 12-14 and 22-24 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

4. Claims 1-11 and 15-21 are under examination

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

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(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

6. Claim 1 is rejected under 35 U.S.C. 102(a) as being anticipated by EP 1035163.

(EP '163 is of record on PTO 1449, Paper No. 2).

EP '163 discloses melt processable starch compositions, comprising (i) starch, (ii) a polymer compatible with starch and having a weight average molecular weight of at least 500,000 and (iii) an additive such as a plasticizer (abstract). Starch can be modified physically and chemically (p. 5, lines 12-43). Wt. Av. Mol wt of starch is from 1000 to 2,000,000 (p. 6, lines 3-5). Such a modified starch reads on the (claimed) destructured starch. Starch is present form 20 to 99.99% by wt. (p. 6, lines 9-12). Polymer is present from 0.001 to 10.00% by wt. (p. 7, lines 6-9). Mixtures of polymers can be used (p. 20, line 42). Plasticizer is used at from 0.1 to 70.0% by wt (p. 7, lines 41-44). A fine fiber can be produced from the composition (p. 16, example 4). Diameter of fiber is less than 50 microns (p. 21, line 48).

Claim 1 therefore lacks novelty.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was

*with discussion
May 12, 2013*

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commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 1-11 and 15-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 1035163 in view of Bertrand et al (U.S.P. 5985776).

Withdrawn
05.12.2003

Disclosure of EP '163 is present in short form above.

EP '163 does not mention polylactic acid or its copolymers (of claim 6) with their differing melting points (claim 7).

Bertrand discloses a non-woven fabric formed from filaments made from a polymer derived from L-and D-lactic acids (abstract). Patentee uses a mixture of polymers also (col. 2, lines 13-28). One polymer has a melting temp of 170.3 °C and other one has a melting temp of 171.6 °C (col. 2, lines 39-45).

It would have been obvious to incorporate a mixture of two polymers derived from lactic acid (taught by Bertrand) into the composition of EP '163 with the expectation of enhancing biodegradability (of said composition) to a maximum level and still maintain it compostable as well as capable of being assimilated by environment without loss of mechanical and physiochemical properties.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to U.K. Rajguru whose telephone number is (703) 308-3224. The examiner can normally be reached on Monday-Friday from 9:30 am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck, can be reached on (703) 308-2462. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9310/9311.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.


Rajguru:mv

April 15, 2002


James J. Seidleck
Supervisory Patent Examiner
Technology Center 1700